

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

MICHAEL FUSELIER ET AL

CASE NO. 2:19-CV-01456

VERSUS

JUDGE JAMES D. CAIN, JR.

**EVEREST NATIONAL INSURANCE CO
ET AL**

MAGISTRATE JUDGE KAY

MEMORANDUM RULING AND ORDER

Before the Court is a Report and Recommendation (Rec. 26) wherein the Magistrate Judge recommends that Travelers Property Casualty Co. of America (the Workers' Compensation carrier) (hereinafter referred to as "Travelers WC")¹ be allowed to intervene, but also recommends that all claims in this lawsuit be dismissed because the Worker's Compensation carrier is an intervenor as of right and an indispensable party pursuant to Rule 19(b). Travelers Property Casualty Co. of America (the UM carrier) (hereinafter referred to as "Travelers UM") is also named a defendant in this lawsuit. For purposes of 28 U.S.C. § 1332(a)(1) jurisdiction, both Travelers UM and WC are citizens of the State of Connecticut. Because Travelers WC's intervention destroys diversity, the Magistrate Judge recommends that the instant suit be dismissed without prejudice. Specifically, the Magistrate Judge concluded that excluding Travelers WC from this lawsuit, would have the ultimate effect of depriving it of any way to recoup payments made to Plaintiff.

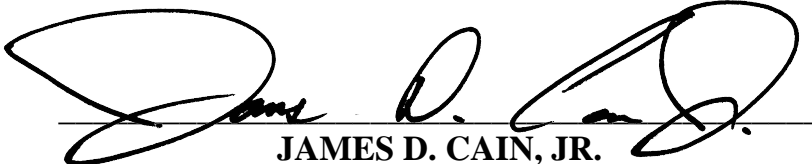
¹ Travelers' WC is the workers compensation carrier for Plaintiff, Michael Fuselier, who was injured while in the course and scope of his employment.

Under the improper joinder doctrine, the citizenship of a non-diverse defendant can be disregarded if the non-diverse defendant demonstrates there is no possibility of recovery against it under state law, and determination of such a claim can involve the pleadings when “the plaintiff has misstated or omitted key facts that would determine the propriety of joinder.” *Smallwood v. Illinois*, 385 F.3d 568, 572 (5th Cir. 2004).

Travelers WC informs the Court that Travelers UM intends to file a motion for summary judgment to be dismissed from this lawsuit based on a valid rejection of the UM coverage. Thus, maintains that Travelers UM has been improperly joined as a defendant. Travelers WC has submitted the rejection form dated December 26, 2016, which reveals that the UM coverage was rejected.² Accordingly,

IT IS ORDERED that the Court will hold the recommendation by the Magistrate Judge in abeyance for 60 days from the date of this Order in order for Travelers UM to file the motion for summary judgment; the Court will consider the Report and Recommendation after the motion, if filed, is decided by this Court.

THUS DONE AND SIGNED in Chambers, on this 30th day of March, 2020.



JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE

² Exhibit 2, Rec. 28-2.